

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

**LaKrystal Coats, as Personal Representative
of the Estate of Demetric Cowan,**

Plaintiff,

-vs-

**Ray Pope, in his individual capacity, FNU
Nichols, in his individual capacity, FNU
Cardarelli, in his individual capacity, FNU
White, in his individual capacity, Gerald
Brooks, in his official capacity as Chief of
Police, Sidney Montgomery, in his individual
capacity, Roy Murray, in his individual
capacity, Pamela Osborne, in her individual
capacity, and Tony Davis in his official
capacity as Sheriff of Greenwood County,**

Defendants.

C.A. No.: 1:17-cv-02930-TLW-SVH

**MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANTS, SIDNEY
MONTGOMERY, ROY MURRAY AND
TONY DAVIS IN HIS OFFICIAL
CAPACITY AS SHERIFF OF
GREENWOOD COUNTY**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, the above defendants, by and through undersigned counsel, respectfully move for an Order of Court granting Summary Judgment in their favor on the following grounds:

- I. THERE IS NO EVIDENCE OR TESTIMONY TO SUPPORT THE CLAIM THAT EARLIER MEDICAL INTERVENTION WOULD HAVE OR COULD HAVE PREVENTED COWAN'S DEATH.**
- II. THE PLAINTIFF HAS FAILED TO PRESENT ANY EXPERT TESTIMONY TO SUPPORT A CLAIM**
- III. THE PLAINTIFF HAS FAILED TO PROVIDE EVIDENCE OF ANY PERSONAL INVOLVEMENT THAT COULD GIVE RISE TO LIABILITY UNDER SECTION 1983**
- IV. THE DEFENDANTS CANNOT BE HELD LIABLE UNDER THE DOCTRINE OF *RESPONDEAT SUPERIOR***

- V. THE ALLEGATIONS OF THE PLAINTIFF'S COMPLAINT DO NOT RISE TO THE LEVEL OF A CONSTITUTIONAL DEPRIVATION OF THE PLAINTIFF'S CONSTITUTIONAL RIGHTS TO MEDICAL CARE AND/OR HEALTH CARE**
- VI. QUALIFIED IMMUNITY BARS THE PLAINTIFF'S CLAIM AND THIS SUIT**
- VII. THE PLAINTIFF HAS NO COGNIZABLE CLAIM AGAINST THE DEFENDANTS FOR NEGLIGENCE/GROSS NEGLIGENCE BASED ON STATE LAW**
- VIII. TO THE EXTENT THE PLAINTIFF ALLEGES ANY STATE LAW CLAIMS AGAINST SIDNEY MONTGOMERY AND ROY MURRAY, THEY CANNOT SURVIVE**
- IX. THE PLAINTIFF'S CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IS BARRED BY THE TORT CLAIMS ACT**
- X. DEFENDANTS MONTGOMERY, MURRAY AND DAVIS ARE ENTITLED TO SUMMARY JUDGMENT ON THE CLAIM FOR LOSS OF FILIAL SERVICES.**

Respectfully submitted,

CHAPMAN, HARTER & HARTER, P.A.

s/ Russell W. Harter, Jr.
Russell W. Harter, Jr. , Fed. No. 1753
Carly H. Davis, Fed. No. 11397
Post Office Box 10224 (29603)
14 Lavinia Avenue
Greenville, SC 29601
864-233-4500 (telephone)
864-232-1710 (fax)
rwhjr@chhlaw.net
chdavis@chhlaw.net
ATTORNEYS FOR DEFENDANTS
MONTGOMERY, MURRAY AND DAVIS

Greenville, South Carolina

February 7, 2019